

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Joseph Izell Mosley,

Petitioner,

v.

United States of America,

Respondent.

C/A No. 7:05-cv-01785-GRA

ORDER
(Written Opinion)

Petitioner moves this Court to issue a certificate of appealability under 28 U.S.C. § 2253(c)(2). Petitioner is proceeding *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982). For the reasons stated below, the Court DENIES the request for a certificate of appealability.

Petitioner sought relief in this Court pursuant to 28 U.S.C. § 2255. On October 27, 2005, this Court issued an Order granting Respondent's motion for summary judgment and dismissing the petition. On November 30, 2005, Petitioner filed a motion requesting "the proper application and rules of the court . . . to obtain a certificate of appealability." This Court issued an Order, filed December 6, 2005, explaining to Petitioner that there is no form or application for filing a motion for

certificate of appealability and outlining the standard Petitioner must satisfy for this Court to grant a certificate of appealability. Petitioner then filed a motion for certificate of appealability on January 17, 2006. This Court denied the motion by Order, filed January 24, 2006. On February 8, 2006, Petitioner filed the instant motion, once again requesting a certificate of appealability.

A habeas corpus petitioner proceeding under 28 U.S.C. § 2255 may not appeal an order denying the petition without first obtaining a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(B). A court can issue a COA only if the applicant has made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The "substantial showing" required for a COA is a lesser showing than would be required for Petitioner to prevail on the merits of his/her petition. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983).

In *Slack v. McDaniel*, 120 S.Ct. 1595 (2000), the United States Supreme Court articulated the standard for determining whether or not to issue a COA under the "substantial showing" language in section 2253(c). The Court stated:

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.

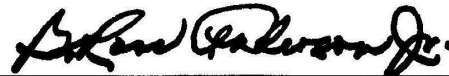
120 S. Ct. at 1604.

However, this Court will not consider repetitive motions for COA where the

Court has evaluated and ruled on Petitioner's claims. Petitioner cannot satisfy the "substantial showing" standard by filing repetitive motions.

IT IS THEREFORE ORDERED that Petitioner's motion for a certificate of appealability be DENIED.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

February 17, 2006.